

S.B.CIVIL WRIT PETITION No.5771/2001
CHHOTU LAL V/s CHAIRMAN, BOARD OF REVENUE & Ors

11.1.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri R.S. Sharma for the petitioner.
Shri S.K. Jain for the respondents.

Under challenge in this writ petition is order passed by the Board of Revenue dated 11.10.2001 whereby the Board while reversing the order 2.8.2001 has allowed the respondent No.2 to lead secondary evidence with regard to a will.

I have heard Shri R.S. Sharma, learned counsel for petitioner and Shri S.K. Jain, learned counsel for respondents.

Shri R.S. Sharma, learned counsel for petitioner in assailing the judgment of the learned Board of Revenue has argued that it has committed a serious illegality by permitting the respondent No.2 to produce secondary evidence. No such permission in the facts of the case could be given when the very genuineness and attestation of the original will is in doubt. Although the respondents contends that the original will has been lost but he has not been able to prove this fact to the satisfaction of the trial court and

therefore the existence of the original will cannot be inferred and the permission to lead evidence to prove the existence of the will by secondary evidence cannot be granted. Contention of the respondent is that the photocopy of the will has been produced because the original will has been produced in the Case No.45/88.

On the other hand, Shri S.K. Jain, learned counsel for the respondent No.2 argued that the Board of Revenue has on correct appreciation of the law and facts of the case, has passed the detailed reasoned order which does not suffer from any error apparent on the face of record. The writ petition should therefore dismissed.

Records of the case show that the Board in the revision petition preferred by the respondent No.2 has categorically noted that the trial court in the present matter can call for original file of the Suit No.45/88 and consider the request of the respondent No.2 for allowing him to lead secondary evidence on the question of will in that light. On doing so, the opposite party would have the right to object to the admissibility or acceptability of the secondary evidence.

In my considered view, the court, while deciding the dispute would obviously take into consideration the settled proposition of law with regard to section 65 of the Indian Evidence Act and the admissibility of the secondary evidence. The petitioner would be free to raise any such argument before such court.

With these observations, this petition is disposed of with no order as to costs.

(Mohammad Rafiq), J.

Chauhan/